

BANBURY V. BANK OF MONTREAL

Action in London Creates Discussion in Banking Spheres —Judge's Summing Up

The verdict given in London courts against the Bank of Montreal for £25,000 in the much-discussed Banbury case is being appealed by the bank, a course which was generally anticipated.

The hearing was concluded, before Mr. Justice Darling and a special jury, in the King's Bench Division. The action was brought by Capt. Cecil Banbury against the Bank of Montreal claiming £25,000, which he said he advanced (and lost) to the Westholme Lumber Company, Canada, on the advice of the late Mr. Galletly, formerly manager of the bank's branch at Victoria, B.C. The advice was alleged to be negligent, and there was a suggestion that part, at any rate, of the money was used for the purpose of reducing an overdraft owing to the bank by the lumber company. In its defence the bank, according to the report of the Canadian Gazette, denied that Capt. Banbury was a customer, or that it was under any duty to advise him; it denied that the advice alleged was given, or, if given, relied upon, and said Capt. Banbury acted on his own judgment. If Mr. Galletly did give any such advice as alleged (the bank further said), he was acting outside the scope of his authority, and the bank denied that it had any concern with the application of the money. Mr. Gordon Hewart, K.C., M.P., Mr. Douglas M. Hogg, and Mr. S. Lowry Porter were for the plaintiff; Sir John Simon, K.C., M.P., and Mr. Raeburn for the bank.

To Advise Carefully.

Summing up the case, his Lordship said he was unable to leave this case to the jury simply for them to find "for the plaintiff" or "for the defendant," because a number of questions required to be decided before that conclusion could be reached. He would therefore have to leave several questions for them to answer, and neither they nor anybody else need be at the least apprehensive that he would attempt to decide any of these facts for himself. The facts had to be decided by the jury, and his duty would be done if he ruled on any questions of law. The action was brought to recover damages, and it was said that the damages were due from the Bank of Montreal because one of its managers advised the plaintiff. If it was his duty, and he had authority from the bank in this particular case to advise him and he did advise him, then he was bound to advise him carefully. If he advised him not carefully, but negligently, and the plaintiff thereby lost his money, the bank was liable to him in damages. The first thing for them to consider, therefore, would be: Had Mr. Galletly authority, as a manager of a branch of the bank, to advise the plaintiff to advance £25,000 on mortgage to the Westholme Lumber Company? Mr. Galletly was a man of great experience. Nobody had said he was dishonest, but he might have been negligent for all that; he might not have advised the plaintiff to the best of his ability, and he might have had some sort of motive which actuated him and which made him less careful than he would ordinarily have been.

Letters That Were Written.

The correspondence in the case showed that he had been advocating that more business should be done with the Westholme Lumber Company, and it was perfectly clear that he thought well of this undertaking. He thought well of its prospects, and if he thought that, he could recommend the venture to Capt. Banbury. If the jury found that he did not think well of it, and found he had been writing letters to that effect, then they would say it was very wrong of him to speak as alleged, and he could only have done so if he were a thoroughly dishonest man. Nobody had said he was; in fact, everybody had said he was a scrupulously honest man. But however well the jury might be inclined to think of Mr. Galletly, his lordship thought it would have been better, after his own district manager (Mr. Sweeney) had said, "Don't you let Cameron (the president of the lumber company) suppose that we will finance this scheme," he had not mentioned this proposition to anybody. It might be an explanation of a good deal that Mr. Galletly was about to retire. He saw Capt. Banbury first on September 7th, and retired on the 14th.

He had no interest in Capt. Banbury whatever, and his final act as a manager for the bank led to Capt. Banbury

doing that for the Westholme Lumber Company which Mr. Sweeney said the bank itself would not do. At that time the bank had a very strong interest in advancing capital to this company because the bank had lent money to it. But the bank was not willing to pay another penny even to save the interest it had. When Capt. Banbury came along, instead of saying nothing about this doubtful company, Mr. Galletly mentioned it to him. Whatever might be imputed against the bank, everything must be laid at the door of Mr. Galletly. It was known that Mr. Galletly was very anxious that this matter of the Westholme Lumber Company should be cleared up. He might have been anxious to save his bank from a lot of anxiety, and he could retire with credit instead of going out of office under the shade of a bad investment. In a postscript to one of his letters on August 13th he had said: "I should like to get this straightened out before I leave." That (said his lordship) might give the jury a cue of all that Mr. Galletly did. On September 7th came Capt. Banbury quite casually and quite unexpectedly with a letter from Sir Edward Clouston. "Gentlemen," said his lordship, "what an opportunity for getting it all straightened out! Here was Capt. Banbury with £25,000 to invest; Mr. Galletly was inclined to believe—obviously inclined to believe—the best of this Westholme Lumber Company, and it may be that he was much too easily convinced." His lordship went on to say that three days after Capt. Banbury decided to lend his money, Mr. Galletly wrote to Mr. Meredith, who became the general manager of the bank:—

Confirmation of Engineer.

"To satisfy ourselves in the matter we recently engaged the services of a well-known and reliable engineer, Mr. C. E. Cartwright, to inspect the work and report fully. This he had done, and I enclose you a copy of his report. . . . I am pleased at the result, as it justifies the faith I have always had in the integrity and ability of the company. It is on the strength of this report that they succeeded in obtaining the additional capital referred to."

That was Capt. Banbury's capital, said his lordship. Mr. Galletly believed in Cartwright's report, and could anyone doubt that, being in that frame of mind, to advise Capt. Banbury to put his money into it was a likely thing for him to have done, because he felt so confident about it? Just at the very moment when Mr. Galletly had this high opinion of the company and Mr. Sweeney a low one, in comes the Cartwright report, which confirmed Mr. Galletly, and on the same day in comes Capt. Banbury. Dealing with the questions he would have to leave to the jury his lordship said, on the question of authority he did not raise the point of general authority because Mr. Hewart, for the plaintiff, only contended that, in the particular circumstances of this case, seeing what was the position between the bank and the Westholme Lumber Company, seeing the correspondence that had passed, and seeing what was the interest of the bank in getting financial assistance for the lumber company, there was authority given to Mr. Galletly to advise Capt. Banbury.

Questions With Jury.

If he had authority, it did not follow that the bank was liable for what, it was said, Mr. Galletly advised the plaintiff. Sir John Simon contended that Capt. Banbury had not given an accurate account of the conversation with Mr. Galletly, and that Mr. Galletly merely introduced him to Mr. Cameron, with whom, and the officers of the lumber company, the matter was arranged, entirely independent of any advice by Mr. Galletly.

His lordship then left certain questions with the jury, who, after consideration, brought in a verdict against the bank for £25,000.

After hearing legal arguments on the findings of the special jury his lordship three days after entered judgment in favor of Capt. Cecil Banbury.

Registrar Pottinger has announced the settlement of the list of contributories of the Bank of Vancouver, and as a result of the decision each of the 600 shareholders of the defunct institution will be responsible for the payment of the balance due on his shares. The holdings of shares run from one to 150 shares. All the contributories, however, are discharged from liability under the double liability clause, the registrar ruling that the action of the liquidator in finding them liable was premature. All interest charges on overdue instalments of stock also are struck out.